

TITLE XII
PUBLIC SAFETY AND WELFARE

CHAPTER 155-B
HAZARDOUS AND DILAPIDATED BUILDINGS

Section 155-B:2

155-B:2 Repair or Removal of Hazardous Building. – The governing body of any city or town may order the owner of any hazardous building within the municipality to correct the hazardous condition of such building or to raze or remove the same.

Source. 1967, 334:1, eff. Sept. 1, 1967.



The City of Berlin
Code Enforcement

Michel Salek 168 Main Street Berlin, NH 03570
603-752-1630, email: msalek@berlinnh.gov

January 20, 2020

VIA SHERIFF'S SERVICE VIA NH LONG ARM STATUTE
VIA FIRST CLASS MAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND VIA IN HAND/ABODE SERVICE

Loveland Lineage LLC
Mr. George Stanley
1316 Rt. 202
Green, ME 04236

George Stanley
469 Hillsboro St.
Berlin, NH 03570-2324

**Re: ORDER TO RAZE OR REPAIR PURSUANT TO RSA 155-B, et seq.
NOTICE OF VIOLATION PURSUANT TO RSA 676:17
CEASE & DESIST ORDER PURSUANT TO RSA 676:17-a
ORDER TO REMOVE PUBLIC NUISANCE PURSUANT TO RSA
147:4&11
ORDER TO CLEANSE PREMISES PURSUANT TO RSA 147:17
469 Hillsboro St., Berlin, New Hampshire**

Dear Mr. Stanley:

This Order follows upon a September 28, 2018 "Order to Raze and Repair Pursuant to New Hampshire RSA 155-B, et seq., Notice of Violation Pursuant to RSA 676:17, Cease and Desist Order Pursuant to RSA 676:17-a, Order to Remove Public Nuisance Pursuant to RSA 147:4 & 11, and Order to Cleanse Premises Pursuant to RSA 147:17, as amended by a subsequent letter from the City Attorney dated October 11, 2018 and November 2, 2018" ("**the Prior Order**"). As you are aware, the Prior Order required you to remediate the deficiencies articulated in said Order discovered at the property located at 469 Hillsboro Street, Berlin, NH, Tax Map 130, Lot 224 ("**the Property**"). The Prior Order was upheld by the local Circuit Court and the Coos County Superior Court. Those Courts authorized the City of Berlin ("**the City**") to conduct the remediation given your protracted failure, refusal or neglect to effect said remediation. The Order also contemplated a follow-up inspection after the large volume of junk, debris and garbage was removed from the property such that further violations, if any, could be

observed and identified. The instant Order issues follows on the Court-ordered remediation and subsequent inspection.

Pursuant to N.H. RSA 155-B, 2 & 3, RSA 676:17, RSA 676:17-a, the City of Berlin Zoning Ordinance and other statutes and regulations set forth more fully below, you are hereby notified that the condition of the Property is in violation of State law, the Berlin Zoning Ordinance, and various life safety and fire codes.

I. CONTINUATION OF PRIOR ORDER TO VACATE

As you are aware, by order of August 21, 2018, the Property was ordered vacated pursuant to RSA 147:16-a given the imminent risk posed by the Property to occupants, owners, and the public. Please be advised that nothing herein alters said Order to Vacate: the City believes that the Property continues to pose an imminent risk to any occupants, including the Owner, and the neighborhood. As such, the Order to Vacate dated August 21, 2018 remains in full force and effect, unless expressly amended herein or as expressly authorized in writing from the City, its officials or counsel.

II. RECENT INSPECTION

The Property was inspected on December 5, 2019. This inspection revealed the following:

1) the electrical system to be severely substandard and requires a review and inspection by a licensed electrician or engineer. Extension cords were used to relay power throughout the structure, and unlicensed electrical work is evident. In contravention of the Court Order affirming the Prior Order, the electrical power was turned on at the Property and remained on as of the December 5, 2019 inspection.

2) the workmanship and advanced deterioration of the structures upon the Property reflect significant dilapidation and are otherwise hazardous to occupants;

3) second hand windows appear to have been installed that were not flush, allowing air to flow in.

4) the Property is not currently serviced by water; the City understands that no current source of heating exists given burst pipes that were not repaired.

5) certain sections of the home were not properly supported, thus raising concerns that certain parts of the structure are subject to imminent collapse.

6) the roof is sagging and is of questionable water tightness

7) structural renovations and alterations were made to the original exterior front wall of the existing home that compromised the structural integrity of the structure. The front portion of the home is not properly sealed or weather tight, nor is any building permit on file for such alterations.

8) the interior of the Property has been labeled and allocated in such a way as it is clear that the Property was used as a boarding house or sleeping house for transient unrelated residents, unfamiliar with the property, to rent for short periods of time.

9) a sloped concrete pad at the front entry protrudes into the existing sidewalk right-of-way; no building permit was identified for such improvement.

10) the enclosed front porch/entry way and roof are not constructed to code, nor such improvement supported by any building permit on file.

11) the oil, fill and vent pipes along the south side of the house are not properly secured and pipes are blocking window egress from bedrooms located along the south side of the house.

12) several posts supporting the two-story 12.5 ft. x 12 ft. attached storage shed are not properly sized nor attached. Several support posts have missing and/or inadequate foundations.

13) the accessory structures and sheds are not constructed to code and are in a state of dilapidation and disrepair. The perimeter fencing is similarly in a state of advanced dilapidation.

14) the attached garage is not fire rated to store any combustible items, vehicles, or gas powered equipment. Any electrical outlets in the garage need to be GFCI protected. Exposed wiring needs to be removed or properly connected.

15) during the 12/5/19 re-inspection, it was discovered that the lower level of the attached garage is full of a combination of household items, garbage, litter, junk and combustible items creating a fire hazard. This was a previously unknown condition.

16) the bathroom in apartment number 1 is vented into the attached garage through a non-compliant flexible dryer vent. Bathroom vents and clothes dryers must be vented outside to code through an exterior wall and terminated with proper vent covers.

17) significant rodent infestation was discovered, consistent with historical complaints of neighborhood residents who alleged that rodents were infesting the area given the condition of the Property.

18) mold is evident throughout the structure on the Property.

19) existing oil furnace and heating system is in such a condition that its operability is questionable and needs to be evaluated, serviced, repaired or replaced by professional heating contractor.

20) existing chimney is in a dilapidated state and needs repointing; City officials also have reason to suspect its fitness for use, and is in such a condition that it needs to be professionally evaluated and cleaned as necessary to ensure proper furnace operation. For the purpose of clarity and complete disclosure, the enclosed reports were prepared in light of said inspection. Such reports are incorporated herein by reference.

III. REGULATIONS, PROVISIONS, SPECIFICATIONS OR CONDITIONS WHICH ARE BEING VIOLATED

You are in violation of:

a. RSA 147:4: in its current condition, the Property stands as a public nuisance injurious to the public health. Following the recent inspection, it was confirmed that the Property is still not serviced by water nor any running lavatory facilities. Further, the inspection revealed significant infestation of rodents, consistent with prior complaints from the neighborhood.

b. RSA 147:8, Toilets; Drains, "No person shall occupy, lease to any other person, or permit any other person to occupy, a building or any part of a building as a dwelling house . . . sleeping house . . . unless such building shall have readily accessible adequate toilet and lavatory facilities, properly ventilated and constructed, and kept in proper sanitary condition." It is evident that you utilize this Property as a boarding house for transient residents. As set forth above, the Property lacks proper toilet and drains, as there is no running water to the Property.

c. RSA 147:10, “No privy, toilet, . . . shall be erected or continued in such place or condition as, in the judgment of the health officers, to be a nuisance or injurious to the public health.” As set forth above, the Property is not serviced by working toilets, sinks, or lavatory facilities. Instead, it appears that occupants utilized buckets instead of toilets, and/or used buckets filled with water from other sources to effect the flushing of toilets. This constitutes a nuisance in contravention of RSA 147:10.

d. Sec. 6-108 Obligation to Register Vacant Buildings. As in the prior Order, in its current condition, the Property constitutes a Vacant Blighted Premises, such that it must be registered and a Blighted Vacant Building Plan must be submitted.

e. Sec. 8-104. Public Nuisance. “No owner, operator or occupant shall cause or let a property to become a Public Nuisance. For purposes of this Chapter, “public nuisance” shall mean the following:

- (a) The physical condition, or use of any premises regarded as a public nuisance at common law.
- (b) Any physical condition, use or occupancy of any premises or its appurtenances considered an accessible nuisance to children, including, but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences, structures or improperly secured buildings.
- (c) Any premises which have unsanitary sewerage or plumbing facilities.
- (d) Any premises designated as unsafe for human habitation or use.
- (e) Any premises from which the plumbing, heating, and/or facilities required in this chapter have been removed, or from which utilities have been disconnected, destroyed, removed, or rendered ineffective, or the required precautions against trespassers have not been provided.
- (f) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure as to endanger life, limb, or property.
- (g) Any premises which are unsanitary, or which are littered with rubbish, garbage, tires or appliances.
- (h) Any structure or building that is in a state of dilapidation, deterioration, or decay; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.”

The condition of the Property is such as to constitute a public nuisance under subsections a, b, c, d, e, f, g, and h of Section 8-104.

f. Sec. 8-106. Vacant Buildings. “Every person or entity owning or having charge of or control of any vacant building shall remove all combustible waste and refuse therefrom and lock, barricade, or otherwise secure all windows, doors and other openings in the building to prohibit entry by unauthorized persons.” The Property meets the definition of “Vacant” under the Berlin Ordinance and is not properly locked, barricaded and otherwise secured.

g. Section 8-151, IMPC 306.1. “All structures shall be kept free from insect and rodent infestation.” As referenced in the foregoing section, significant rodent infestation was observed, corroborating historical complaints of the neighborhood.

h. Sec. 8-151, IMPC 308. “Any dwelling which has any or all of the following general substandard conditions shall be deemed unfit for human habitation.

(1) Dilapidated, decayed, unsafe or unsanitary. Any dwelling which has become or is so dilapidated, decayed, unsafe, unsanitary, or which utterly fails to provide the amenities essential to decent living, or which is likely to cause sickness or disease, so as to work injury to the health, safety, or general welfare of those living therein shall be deemed unfit for human habitation.

(2) Inadequate light, air and sanitation. Any dwelling having light, air and sanitation facilities which are inadequate to protect the morals, safety or general welfare of human beings who live or may live therein shall be deemed unfit for human habitation.

(3) Inadequate egress. Any dwelling having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication shall be deemed unfit for human habitation.

(4) Insecure parts. Any dwelling which has parts thereof which are so attached that they may fall and injure members of the public or property shall be deemed unfit for human habitation.

(5) Unsafe, unsanitary or dangerous to public. Any dwelling which because of its condition is unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of this city shall be deemed unfit for human habitation.”

As set forth in the preceding section, many aspects of the structures on the Property render the Property unfit for habitation as contemplated in this section.

i. Section 17-82, the Berlin Zoning Ordinance at Section 17-62 permits certain uses for properties within the Residential General Zone, where the Property is located. Those uses do not include boarding house or use as transient or short-term housing. As set forth above, it is evident from the City’s inspection that you have utilized the Property as a boarding house, renting out singular rooms to persons unfamiliar with the Property. This is a violation of the Zoning Ordinance as such use is not permitted in the Residential General Zone of Berlin Zoning Ordinance.

j. Section 17-192. No “structure or use [shall] operate so as to create a fire, explosion or safety hazard in the City of Berlin.” As set forth above, the condition of the structure upon the Property is such as to create a safety hazard to any occupants. Among other things, the structure is of questionable integrity. Moreover, unpermitted improvements, including the heating oil fill and vent piping system and the electrical system are such as to imperil any occupants and the neighborhood.

k. Section 17-193(4). This section prohibits structures that are not constructed or maintained in conformance with regulations of the State of New Hampshire and all applicable sections of the fire and life safety codes of the City of Berlin as amended. As set forth above, the electrical system does not meet code, and the structure itself does not meet life safety codes. Further, the electrical system, the lack of necessary egress for boarding houses, the blockage of other means of egress violate various provisions of the applicable fire code.

l. Section 17-213(1)(a), requiring building permits for alterations. As set forth in the preceding section, no building permits were pulled for various improvements at the Property.

IV. FORMAL NOTICE

The instant notice is meant to satisfy the various notice provisions provided in the following statutes:

- a) RSA 147:4 – Notice to Remove or Destroy Nuisance
- b) RSA 147:7-a – Notice to Owner of Nuisance and Abatement Cost Collection
- c) RSA 147:11 – Order of Discontinuance of Nuisance
- d) RSA 147:17 - Order to Cleanse Premises
- e) RSA 147:17-a - Order to Place Sewage Disposal System In Sanitary Condition
- f) RSA 155-B: 2&3 – Order to Raze or Repair
- g) RSA 676:17 - Notice of Violation
- h) RSA 676:17-A - Cease and Desist Order
- i) Berlin Ordinance Sec. 6-109 and 6-110 – Notice of Blighted Vacancy and Public Nuisance

V. CORRECTIVE ACTIONS REQUIRED

1) Immediately turn off the electricity servicing the Property and ask the electric utility provider to pull all electric meters servicing the Property.

2) Register the Property as a Blighted Vacant Building pursuant to Berlin Ordinance Sec. 6-108 and 6-110.

3) Present the City, through Michel Salek, its Code Enforcement Officer, Angela Martin-Giroux, City Health Officer, and Peter Donovan, Berlin Fire Inspector a written plan on abating and removing the violations set forth above (“**the Abatement Plan**”) on or before February 7, 2020. The City shall review, approve, or alter same. Without limitation, this plan must 1) constitute and meet the requirements of a Blighted Vacant Building Plan pursuant to Berlin Ordinance 6-112 and 6-113, and 2) include provisions detailing and requiring the inspection of the Property by a licensed engineer and licensed electrician, each of whom must certify the safety of the structure and electrical system and conformance with all applicable Life Safety, Fire, Electric, Property Maintenance, or similar codes, as applicable.

4) As part of the Abatement Plan, furnish written evidence of the engagement of engineer and licensed electrician referenced in subsection 3) above. Such documentation should detail the scope of such engagements, to include, at minimum, a complete inspection of the Property for conformance with applicable laws, regulations, and codes, a report of findings, follow-up inspection to certify the completion of such repairs/improvements, and a final report certifying the fitness of the structure, appurtenances and electrical system and conformity of same to all applicable laws, regulations and codes.

5) As part of the Abatement Plan, to the extent such engineer or electrician identifies any deficiencies, pull all necessary permits to correct such deficiencies and repair same, using licensed tradesmen as required by law.

6) As part of the Abatement Plan, repair roof such as to address its dilapidated state, paint structure, repair or remove accessory structures and perimeter fencing. Remove and replace oil fill and vent piping in code-compliant manner such as to clear window egress.

7) As part of the Abatement Plan, apply for and pull permits for any improvements completed without a building permit.

8) As part of the Abatement Plan, engage a mold remediation specialist to test for mold and effect a remediation plan if dangerous levels of mold are identified. As with the engineer and licensed electrician referenced in subsection 3) above, the Abatement Plan should include paperwork evidencing the engagement of such mold remediation specialist, and include an explanation of the scope of the engagement, to include preliminary testing of the air and surfaces within the building, a report on results of same, a remediation plan (should unacceptable levels of mold be identified), and follow-on testing after the remediation is accomplished.

9) As part of the remediation plan, restore water to the Property, repairing any plumbing deficiencies, and repair the HVAC system.

10) Discontinue any use of the Property as a boarding house, sleeping house, or similar purpose that furnishes short-term rentals of rooms.

11) To the extent that you intend to use the Property for residential purposes (irrespective of how brief or intermittent the habitation), you must turn on water service and take whatever steps are necessary to provide potable water and suitable, code-compliant lavatories.

12) Engage a professional exterminator to rectify any rodent infestation, certifying that the structures at the property are clear from such infestation.

Your intentions for making the foregoing corrective actions must be included in your written Abatement Plan.

As set forth above, nothing herein should be construed to lift the Order to Vacate previously issued by the City. Said Order to Vacate is only modified as necessary to effect the Abatement Plan referenced above upon approval. Otherwise, the Notice to Vacate remains in full force and effect, except as expressly modified in writing by City Officials or Counsel. If you have any questions regarding the foregoing required corrective action, please contact the undersigned at (603)752-1630.

VI. TIME FRAME TO COMPLETE CORRECTIVE ACTION

As set forth above, the written Abatement Plan must be furnished on or before February 7, 2020, and all actions and obligations under the Abatement Plan must be met on or before February 28, 2020; failure to do so will lead to further legal action, including but not limited to the City seeking the remedies set forth in the following subsection.

VII. NOTICE OF VIOLATION/LIABILITY FOR ABATEMENT, RAZING AND/OR REPAIR COSTS, AND COMMENCEMENT OF FINES & PENALTIES

This Notice also serves to advise you of your exposure to liability for Abatement, Razing and/or Repair costs, as well as civil fines. Without limitation to the City's remedies, you are liable for the following:

Pursuant to RSA 147:7, you are liable for expense of the removal or destruction of the nuisance or other thing, including the fees of the health officers who order or cause the same to be removed. Consistent with RSA 147:7-a(I)(c), failure to take the corrective action within the prescribed timeframe may result in corrective action being taken by the municipality, and that if this occurs, the municipality's costs shall constitute a lien against

the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property, if not paid.

You are also advised, consistent with RSA 155-B 2 & 3, that a motion for summary enforcement of the order will be made to the court of the district or municipality in which the hazardous building is situated unless corrective action is taken, or unless an answer is filed within the time specified in RSA 155-B:6 and that any costs, attorney's fees, and expenses incurred by the municipality in bringing the property into compliance may be enforced as a lien against the subject property and any other property owned by the same owner in the state pursuant to RSA 155-B:9, II.

This notice also constitutes a cease and desist order pursuant to RSA 676:17-a. To that end, you are advised that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in RSA 676:17-a (V). Failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.

Finally, this written Notice of Violation is given to satisfy the fines and penalties requirement of RSA 676:17, I and II, which provides in part that,

I. "Any person who violates any of the provisions of . . . any local ordinance, code, . . . or any provision or specification of any . . . local . . . land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty not to exceed \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier."

II. "In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees, and investigatory expenses."

VIII. NOTICE OF FINES FOR ONGOING VIOLATIONS

To the extent that the above-referenced violations are not remedied by **the deadline for corrective action set forth in the preceding paragraphs**, and those violations continue, you are hereby notified that such continuation of the violations constitute subsequent offenses, thus subjecting you to a fine of \$550 per day that such violations continue. Accordingly, this Notice of Violation provides express notification

that the continuation of the above-referenced violations constitutes additional offenses and subjects you to an increased fine for every day that such violations continue.

If you have any questions regarding this **NOTICE OF VIOLATION / CEASE & DESIST ORDER**, you should promptly contact the undersigned of the City of Berlin at (603)752-1630.

CITY OF BERLIN
CODE ENFORCMENT OFFICER

Date: January _____, 2020

Michel Salek, Code Enforcement Officer

CITY OF BERLIN
HEALTH OFFICER

Date: January _____, 2020

Angela Martin-Giroux – Health Officer

CITY OF BERLIN
FIRE INSPECTOR

Date: January _____, 2020

Peter Donovan – Fire Inspector

CITY OF BERLIN
CITY COUNCIL

Date: January _____, 2020

Jim Wheeler, City Manager
Duly Authorized by Council Vote

CC: Christopher T. Hilson, Esq., City Attorney